Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
King County, Washington Request Concerning E911 Phase I Issues	)	

To: Chief, Wireless Telecommunications Bureau

OPPOSITION COMMENTS OF THE TEXAS 911 AGENCIES
TO THE PETITON FOR RECONSIDERATION OF THE KING COUNTY RULING

Pursuant to the Public Notice[1] issued by the Wireless Telecommunications Bureau (Bureau), the Texas 911 Agencies file comments in opposition to the Petition for Reconsideration of the four wireless carriers[2] who dispute the Bureau's decision[3] regarding the King County, Washington, E-911 Program Office[4] (King County) request. King County sought

[1] Public Notice, *Wireless Telecommunications Bureau Seeks Comments on Petition for Reconsideration Regarding Allocation of Costs of E911 Implementation*, CC Docket No. 94-102, DA 01-1520 (Wireless Telecom. Bureau rel. June 27, 2001).

[2] Verizon Wireless, VoiceStream Wireless Corporation, Nextel Communications, Inc., and Qwest Wireless, LLC, petitioned the Bureau for reconsideration of the King County decision on June 6, 2001 (Recon Petition).

[3] Letter from Thomas J. Sugrue, Chief, Wireless Telecommunication Bureau, Federal Communications Commission, to Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, dated May 7, 2001 (Bureau Letter).

[4] Letter from Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunication Bureau, Federal Communications Commission, dated May 25, 2000 (King County Letter).

clarification on the allocation of Enhanced 911 (E911) implementation costs. The Texas 911 Agencies would respectfully show:

Executive Summary

The Bureau correctly decided the request from King County for resolution of the more-than-year-long impasse between itself and wireless carriers by requiring wireless carriers to bear those costs that precede the 9-1-1 Selective Router while Public Safety Answering Points (PSAPs) assume costs beyond the input to the 9-1-1 Selective Router.[5]

The Bureau should deny the Recon Petition, as the Federal Communications Commission (Commission) fully has considered and rejected each issue raised in the Recon Petition. Moreover, in *United States Cellular Corp. v. F.C.C.,*[6] a very recent affirmation of the Commission's elimination of the carrier cost recovery requirement, the United States Court of Appeals for the District of Columbia Circuit addressed and dismissed arguments significantly similar to those of Petitioners.

BACKGROUND

In its May 25, 2000 letter to the Bureau, King County's E911 Program inquired: "[Is] the funding of network and database components of Phase I service, and the interface of these components to the existing 911 system the responsibility of the [Public Safety Answering Points] PSAPs"?[7] Citing applicable Section 20.18[8] of the Commission's rules, King County urged that carriers should provide the additional network and data base components required to deliver Phase I service and the interface of these network elements and data base components to the

[5] Bureau Letter at 1.
[6] *United States Cellular Corp. v. FCC*, 2001 U.S. App. LEXIS 14395, (D.C. Cir. June 29, 2001)(*U.S. Cellular*).
[7] Bureau Letter at 1, quoting King County Letter.
[8] 47 C.F.R. § 20.18.

existing 911 system at no cost to the counties,[9] clarifying further that wireless carriers pay for facilities and services on the carrier side of the selective router and the ALI database.[10]

Issuing a Public Notice,[11] the Bureau sought comment on several questions, including "[w]hether a clearly defined demarcation point exists in the E911 network[] that separates the responsibilities of carriers and PSAPs for providing the various components or upgrades needed to implement Phase 1 technologies." Footnote 3 (omitted above at the bracket) of the Public Notice stated, "For purposes of this Public Notice, we consider the E911 network to include all facilities and equipment beyond the wireless carrier's switch necessary to transmit wireless 911 calls to PSAPs."[12]

The Recon Petitioners individually, including Nextel Communications, Inc. (Nextel), filed comments. Nextel's joinder in the Recon Petition is surprising, however, as Nextel acknowledged ownership of the very elements that the Bureau Letter imposes on carriers:

> Nextel has upgraded its system to generate the necessary ANI and ALI information when a Nextel subscriber makes a 911 call; Nextel has hired the necessary consultants to facilitate the generation and development of this ANI and ALI information; Nextel has accumulated all of the required cell site location information (and associated PSAP location information) to load into the LEC's ALI database; and Nextel has stated that it will take responsibility for loading that data into the ALI database. Additionally, *Nextel agreed to pay for the trunking necessary to deliver that information to the selective router at the LEC's facilities. All of these actions are Nextel's responsibility,* are within Nextel's control and are, therefore, costs associated with Nextel's Phase I activities.[13]

Nextel established the PSAP's responsibilities within the same filing:

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[9] *See* fn. 4 *supra*.
[10] Correspondence from Marlys R. Davis to Blaise Scinto, Deputy Chief, Policy Division, dated June 21, 2000.
[11] Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues*, CC Docket No. 94-102, DA 00-1875 at 2 (Wireless Telecom. Bureau rel. Aug. 16, 2000) (Public Notice).
[12] *Id.*
[13] Comments of Nextel Communications, Inc., of September 18, 2000 at 4-5 (emphasis added).

> King County's Letter, although somewhat vague, appears to be seeking cost recovery from the carriers for Phase I E911 upgrades that are required for PSAP systems to receive and display ANI and ALI information. While Nextel is moving forward with Phase I implementation where there has been a valid PSAP request, Nextel is not prepared to fund the costs of upgrading the PSAP's and/or the Local Exchange Carrier's ("LEC") systems to enable the transmission of ANI and ALI. These costs are not the responsibility of wireless carriers and should be borne by the parties incurring the costs.[14]

Summarizing the comments, the Bureau concluded that section 20.18(d)[15] of the E911 regulations imposes on wireless carriers the "costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's Mobile Switching Center (MSC) to the 911 Selective Router, and the particular databases, interface devices, and trunk lines that may be needed to implement the Non-Call Path Associated Signaling and Hybrid Call Path Associated Signaling methodologies for delivering E911 Phase I data to the PSAP."[16]

Section 20.18(d) requires certain Commercial Mobile Radio Service licensees to "provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI."[17] Triggering the carriers' obligation is Section 20.18(j), which requires a request from a PSAP capable of "receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place."[18]

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[14] *Id.* at 2.
[15] 47 C.F.R. § 20.18(d).
[16] Bureau Letter at 1.
[17] 47 C.F.R. § 20.18(d).
[18] 47 C.F.R. § 20.18(j).

Petitioners dispute the Bureau's decision, claiming the appropriate demarcation point for determining wireless carriers' and PSAPs' cost responsibilities is the MSC.[19] Petitioners further argue, "[T]he Bureau's decision was beyond the scope of its delegated authority, is not supported by the Commission's rules and the record and constitutes rulemaking for which the full Commission must provide notice and comment."[20]

DISCUSSION

I. THE BUREAU FULLY CONSIDERED AND REJECTED SIMILAR COMMENTS FROM PETITIONERS AND OTHER PARTIES.

Petitioners' principal argument—that the Bureau's ruling did not heed the "many industry arguments"[21]—is without merit.[22] A Bureau ruling contrary to that advocated by the wireless carriers does not mean that "the Bureau chose to ignore altogether the many filings opposed to the King County request."[23] According to the *U.S. Cellular* Court, the Commission "has no obligation to take the approach advocated by the largest number of commenters" . . . ; indeed, the Commission may adopt a course endorsed by no commenter. The Commission's only responsibilities are to respond to comments . . . and to choose a reasonable approach backed up by record evidence."[24] The Bureau Letter complies with these requisites.

The "Comments" section of the Bureau Letter summarized the oft-made arguments and not-surprising division of opinion,[25] with the majority of wireless carriers "contend[ing] that the PSAP is responsible for any system upgrades necessary to deliver Phase I information in a form

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[19] Recon Petition at 2.
[20] Recon Petition at 3.
[21] Recon Petition at 4.
[22] Nextel's reconsideration request, moreover, must be dismissed as not credible, since its initial comments acknowledged ownership of the very expenses that the Recon Petition disputes.
[23] Recon Petition at 4.
[24] *U.S. Cellular,* 2001 U.S. App. LEXIS 14395, *23-24, quoting *Natural Res. Def. Council v. EPA*, 822 F.2d 104, 122, n.17 (D.C. Cir. 1987) and citing 5 U.S.C. § 553.

compatible with the existing 9-1-1 network and, thus, that the appropriate demarcation point is the wireless carrier's MSC."[26] Public safety organizations, however, maintained that "carriers must provide Phase I data in a form usable by the PSAP and, thus, that the appropriate demarcation point for allocating responsibilities and associated costs . . . is the dedicated 911 Selective Router maintained by the ILEC."[27] Based on the significantly same arguments made by the respective parties throughout CC Docket No. 94-102, the Bureau made a reasoned decision, supported by the record.

Petitioners further claim that the Bureau ignored "significant comments"[28] that were relevant to the decision and, if adopted, would require "a change in an agency's proposed rule."[29] The Public Notice did not contemplate changing the Commission's "proposed" rule, as no "proposed" rule was noticed or at issue. As plainly stated in the title of the Public Notice, comment was requested on "Phase I E911 Implementation Issues." The Bureau ruling did not violate the requirements of the Administrative Procedure Act but instead decided an implementation issue that has lingered too long, jeopardizing the safety of 9-1-1 callers. The majority of the 11 putative "critical legal issues,"[30] which Petitioners assert the Bureau ignored, *were* irrelevant to the implementation query.

Petitioners raise contradictory arguments regarding the E911 Wireline Network. First, they assert that the Bureau incorrectly defined the E911 Wireline Network by failing to recognize that the E911 Wireline Network includes trunks from the MSC and/or the end office

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[25] Bureau Letter at 3.
[26] *Id.*
[27] *Id.*
[28] Recon Petition at 4, citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 312 (1979) and *Atlanta Power v. Castle*, 6636 F. 2d 323, 384 (D.C. Cir. 1979)
[29] *Id.*, citing *HBO v. FCC*, 567 F. 2d 9, 36 (D.C. Cir. 1977) and *COMSAT v. FCC*, 836 F. 2d 623, 634 (D.C. Cir. 1988).

of the incumbent to the 9-1-1 Selective Router.[31] Petitioners are wrong. In accord with the Second Memorandum Opinion and Order,[32] the Bureau acknowledges that the "existing" E911 Wireline Network includes trunking to the 9-1-1 Selective Router. It acknowledges the matter at Bureau Letter footnote 3, which Petitioners then use to assert establishes the inconsistency of the Bureau's decision. Petitioners cannot have it both ways.

Petitioners, moreover, read too much into Bureau Letter footnote 3, which stated, "For purposes of this Public Notice, we consider the E911 network to include all facilities and equipment beyond the wireless carrier's switch necessary to transmit wireless 911 calls to PSAPs." The fact that the existing E911 wireline network consists of these elements does not serve to impose costs on any particular party when wireless 9-1-1 calls are at issue. The Commission authorized the Bureau's determination of which party bore the costs, and the Bureau Letter fully explains the Bureau's decision on the issue.

II. THE BUREAU'S DECISION IS CONSISTENT WITH COMMISSION RULES AND PRECEDENT

The Bureau's resolution of the King County implementation issue is wholly consistent with Commission rulings in this docket. Cognizant of the polarized interests at issue and the implementation delays, the Commission authorized the Bureau's review of disputes: "[I]n the event that an impasse arises, Commission staff will be available to help resolve these disagreements on an expedited basis."[33] In their resolution of disputes, the Commission directed

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[30] Recon Petition at 5-6.
[31] Recon Petition at 6.
[32] In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Memorandum Opinion and Order*, FCC 99-352, 14 FCC Record 20,850 (1999), recon. Denied, 15 FCC Record 22810 (2000), *affirmed sub nom*., *United States Cellular Corp. v. FCC*, 2001 U.S. App. LEXIS 14395 (D.C. Cir. June 29, 2001)(Second MO&O).
[33] Second MO&O, 14 FCC Record 20854 at ¶ 7 (emphasis added).

the Bureau to consider a number of specific factors including costs to the PSAP and wireless carriers, implementation costs, funding from state-sponsored mechanisms, and the technical configuration of the PSAP's *existing* E911 system.[34]

Continuing its discussion of Phase II implementation, the Commission reiterates Staff's authorization to resolve Phase I impasses:

> [R]ather than adopt the approach requested by the carriers, we should instead have the parties petition the Commission if a particular issue . . . that results in an impasse that cannot be resolved by negotiation within the timeframe for *Phase I* or Phase II implementation after a PSAP service request . . . . In these circumstances, which we anticipate will be relatively rare, carriers and PSAPs are free to *bring these issues to the Commission's staff for resolution*. We delegate to staff the authority to resolve such disputes.[35]

Clearly, the Commission authorized the Bureau's review of precisely the issue raised by King County, and the Bureau appropriately made its decision.

The Bureau, moreover, did not "supply new content through 'interpretations,'"[36] as Petitioners assert citing to *Caruso v. Blockbuster-Sony Music Entertainment*. Describing the history of that case, the *Caruso* Court explained that the Department of Justice (DOJ) determined the certain issue would not be resolved by the adopted rules. Later the DOJ, without engaging in notice and comment, announced it would "interpret the initial rules as resolving the issue that had previously been left open." The *Caruso* Court concluded that the "reinterpretation constituted a 'fundamental change' in interpretation that could only be made by adopting a substantive rule pursuant to notice and change."[37] Such is not the case herein. The

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[34] *Id.*
[35] *Id.*, 14 FCC Record 20886 at ¶¶ 91-92 (emphasis added).
[36] Recon Petition at 8, citing *Caruso v. Blockbuster-Sony Music Entertainment (Caruso)*, 174 F.3d 166, 174-75 (3d Cir. 1999)
[37] *Caruso* at 150, quoting *Lyng v. Payne*, 476 U.S. 926, 939 (1986).

Commission, fully aware that disputes would arise, delegated the settlement of disputes to the Bureau and, thus, ensured that no issue would remain unresolved and hamper implementation.[38]

Petitioners further mistakenly urge that the Bureau Letter fails to "sensibly conform[] to the purpose and wording of the regulations,"[39] relying on *Martin v. OSHA*. The *Martin* case does not support Petitioners' position. *Martin* begins by stating that "[i]t is well established 'that an agency's construction of its own regulations is entitled to substantial deference.'"[40] *Martin* continues with the language upon which Petitioners rely but does not advance their argument:

> In situations in which '*the meaning of [regulatory] language is not free from doubt*,' the reviewing court should give effect to the agency interpretation so long as it is reasonable, that is, so long as the interpretation 'sensibly conforms to the purpose and wording of the regulations.' Because applying an agency's regulation to complex or changing circumstances calls upon the agency's unique expertise and policymaking prerogatives, we presume that the power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers.[41]

No ambiguity is at issue; the Bureau is to decide disputes, and the Bureau's interpretation is reasonable and sensibly conforms to the purpose and wording of the rule. "[T]he ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation."[42] The Bureau's interpretation is not plainly erroneous nor inconsistent with the regulation.

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[38] In the Fifth Memorandum Opinion and Order, the Commission explains, "The purpose of this modification [elimination of the carrier cost recovery requirement] was to accelerate implementation of this important service to ensure that wireless callers of 911 obtain emergency assistance more rapidly and efficiently." In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fifth Memorandum Opinion and Order*, FCC 00-405, 15 FCC Record 22810 (2000) (Fifth MO&O).

[39] *Martin v. Occupational Safety and Health Rev. Comm'n (Martin)*, 499 U.S. 144, 150-51 (1991), citing, *inter alia*, *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965).

[40] *Martin,* 499 U.S. at 150.

[41] *Id.* at 150-51 (emphasis added)(bracketed language original).

[42] *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965), quoting *Bowles v. Seminole Rock Co*., 325 U.S. 410, 413-14 (1945).

Petitioners' argument, that the Bureau's "new policy choice" disrupts the Commission's previous determination and understanding in the Second MO&O of how E911's total costs are to be jointly shared by PSAPs and carriers, is incorrect. The record does not support Petitioners' claim that the Bureau has ruled contrary to the Commission's findings on the issue. To the contrary, the Bureau Letter is consistent with the record in this docket and has not strayed from the Commission's findings; it is consistent, moreover, with the Commission's authorization that the Bureau decide the issue. Agency action is permitted "to stand *without elaborate explanation* where distinctions between the case under review and the asserted precedent are so plain that no inconsistency appears."[43]

Petitioners apparently consider the Bureau Letter in a vacuum when they claim the record does not support the recovery of implementation costs by wireless carriers through either surcharges on customers' bills or service charges. Petitioners ignore altogether the Second MO&O with its repeated references to the ability of wireless carriers, as unregulated entities,[44] to recover implementation costs via surcharges or service charges. In denying reconsideration of elimination of the wireless providers' cost recovery rule, the Commission reiterates its position in the Fifth Memorandum Opinion and Order: "CMRS carriers covered by our E911 rules are not subject to rate regulations and may adjust their prices to recover their costs."[45] Most recently the *U.S. Cellular* Court noted, "[A]s the Commission points out, the difference in

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[43] *Bush-Quayle '92 Primary Committee, Inc. v. FERC*, 104 F.3d 448, 454 (D.C. Cir. 1997)(emphasis added).

[44] *See* Second MO&O, 14 FCC Record 20861 at ¶ 25; 14 FCC Record 2086162 at ¶ 27; 14 FCC Record 20862-63 at ¶ 29; 14 FCC Record 20863 at ¶ 30; 14 FCC Record 20867 at ¶ 40; 14 FCC Record 20870 at ¶ 49, 14 FCC Record 20872 at ¶ 52; 14 FCC Record 20872-73 at ¶ 54; 14 FCC Record 20873-74 at ¶ 56.

[45] Fifth MO&O, 15 FCC Record 22810, 22814.

funding mechanisms reflects an important difference in the way each service is regulated: landline carriers are rate-regulated; wireless carriers are not."[46]

Petitioners further rely on the mistaken and rejected assertion that "holding PSAPs responsible for such [implementation] costs is consistent with the fact that the PSAPs are the ultimate cost causers."[47] The *U.S. Cellular* Court unequivocally disagrees that PSAPs are the cost causers for wireless E911 implementation: "PSAPS are governmental entities playing a critical role in the provision of public safety services . . . . PSAPS themselves derive no benefit from wireless E911 services; rather they provide safety services to benefit the public."[48] More pointedly, the Court determines, "The fact remains that the Commission has imposed upon wireless carriers an obligation to implement a service in the public interest. Whether it does this directly or with the cooperation of other governmental safety organizations, it has no obligation to compensate carriers for their costs."[49]

Although the Commission may have contemplated that eliminating the carrier cost recovery mechanism requirement settled Phase I, the Bureau's King County decision follows logically[50] from the Commission's decisions, consistent with the authority to establish a demarcation point on the network. The Bureau's decision focused on the "existing E911 system"[51] to properly set the demarcation at the Selective Router. King County points out to the Commission *and the Petitioners*, as early as the Second MO&O, "that all of the PSAPs in Washington are equipped with E911 equipment capable of receiving Phase I data, although it

[46] *U.S. Cellular,* 2001 U.S. App. LEXIS 14395, *25.
[47] Recon Petition at 10 (footnote omitted).
[48] *U.S. Cellular,* 2001 U.S. App. LEXIS 14395, *15.
[49] *Id.,* 2001 U.S. App. LEXIS 14395, *18.
[50] *Cassell v. FCC*, 154 F.3d 478, 484 (D.C. Cir. 1998).
[51] See Second MO&O, 14 FCC Record 20854 at ¶ 7; 14 FCC Record 20886 at ¶ 92; 14 FCC Record 20887 at ¶ 94 (PSAPs' dependence on their LEC-based 9-1-1 systems).

does require CMRS carriers to interface *to the existing E911 systems* at the E911 selective routers."[52] The Bureau states, "Thus an interpretation of Section 20.18(d) must account for the presence of the existing E911 Wireline Network, which is maintained by the [incumbent local exchange carrier] ILEC and paid for by PSAPs through tariffs."[53] The footnote omitted in this quotation referred to "existing" network language at Second MO&O paragraphs 92 and 94.

Additional "existing" network language is found at paragraph 96, wherein the Commission effectively set the Selective Router as the demarcation point:

> [U]nder present network approaches wireless carriers cannot provide E911 without interconnecting with the incumbent LEC . . . .We agree that CRMS carriers must also be able to provide the additional E911 service in a cost-effective, efficient, and timely manner and that the interconnection problems pose a risk to successful implementation. [Wireless carriers] contend that LECs fail to provide accurate cost information and charge excessive prices for the [interconnection] service.[54]

Wireless carriers conceded, as acknowledged by the Commission, that they bore the costs of interconnection to the incumbent LEC, which interconnection they maintained was hindered by incumbents' actions and/or inaction. The Commission contemplated throughout the Docket 94-102 proceeding that wireless carriers bear the interconnection charges to the existing E911 network.

Petitioners' next argument that authorizing the PSAP's selection of a particular wireless E911 technology serves as a disincentive for the PSAP to minimize the costs WSPs and "their customers would have to bear"[55] is wholly without support in the record. With their citations to past Commission language, this argument synthesized is that the Bureau incorrectly requires wireless carriers to bear those costs that precede the 9-1-1 Selective Router. By Commission

[52] Second MO&O, 14 FCC Record 20888 at ¶ 87 (emphasis added).
[53] Bureau Letter at 3 (footnote omitted).
[54] Second MO&O, 14 FCC Record 20888 at ¶¶ 96-97.

rule PSAPs must fund their costs of implementing Phase I E911 service. PSAPs—some perhaps with far less resources than the WSPS—are weighing all issues attendant to each of the three available technologies. They are considering, rightly, the costs to them. They have selected and/or will select the upgraded CPE that is consistent with their existing E911 network based on cost considerations, among others, and, thus, what they require WSPs deliver to them is determined by the equipment they select. The Bureau Letter does not serve as a disincentive to costs that may be avoided. WSPs are in total and complete control of the purchases, consistent with the PSAP's existing E911 network, they must make. The Bureau fully considered prior Commission language and correctly decided the King County issue.

The Commission, furthermore, has rejected in the Second MO&O carriers' argument that a rulemaking is necessary to address those issues decided by the Bureau Letter: "Ameritech . . . seeks numerous modifications to our rule in order to achieve implementation, including provisions establishing what carrier costs are eligible [for cost recovery] . . . ."[56] The Commission explains that carriers fail to "demonstrate how such additional procedures and requirements would help ensure a speedier implementation of E911 service."[57] The *U.S. Cellular* Court also dismissed cost recovery reconsideration arguments "that the Commission failed to consider alternative solutions to the problems posed by the carrier cost recovery requirement, including drafting more specific instructions and guidelines on the most disputed cost recovery issues . . . ."[58] Petitioners' request for a rulemaking, thus, is moot, as the Commission and *U.S. Cellular* Court have rejected the relief sought.

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[55] Recon Petition at 12.
[56] Second MO&O, 14 FCC Record 20870 at ¶ 48.
[57] *Id.*
[58] *U.S. Cellular,* 2001 U.S. App. LEXIS 14395, *22.

Petitioners ignore the Bureau's reasoned explanation and tout theirs when they expound at length that the Bureau failed to address what duties Section 20.18(j) imposes on PSAP and what constitute the PSAP's costs of the E911 service.[59] The entirety of the Bureau's discussion section—four pages of the slightly over six-page ruling—focuses on an explanation of the issues. The Bureau notes that Section 20.18(d)(1) imposes an obligation contingent on the requesting PSAP's ability to receive and utilize the data elements associated with the [Phase I] service. "The Commission, by this rule, has made carriers responsible for *providing* Phase I information *to* PSAPs."[60] Describing the mechanics and technicalities of the existing 9-1-1 wireline system, the Bureau determines, "Thus, in order for wireless carriers to satisfy their obligation under section 20.18(d) to *provide* Phase I information *to* the PSAP, carriers must deliver that information to the equipment that analyzes and distributes it—i.e., to the input to the Selective Router."[61]

The Bureau further clarifies the cost apportions of the "add-ons" to the existing 9-1-1 Wireline Network and the rationale for the allocations, "As compared with the wireline E911 system, there are additional costs for the transmission of wireless Phase I information to the PSAP that are attributable to certain complexities not involved with the simpler operation of transmitting a wireline caller's eight-digit phone number."[62] Petitioners' claim, that the Bureau gives "at most, a passing reference"[63] to the Section 20.18(d) obligations, is unfounded. The

[59] Recon Petition at 11, citing 47 C.F.R. § 20.18(j).
[60] Bureau Letter at 3 (emphasis original).
[61] *Id.* at 4.
[62] *Id.*
[63] *Id.* at 4, fn. 41.

Bureau "provided a reasonable explanation for the line it has drawn, and demonstrated that line's relationship to the underlying problem . . . ."[64]

Reviewing the differences between regulation of carriers, the *U.S. Cellular* Court has rejected Petitioners' discrimination argument: "[T]he Commission's apparent focus in achieving and wireline parity is not on making funding methods identical, but on equalizing services available to consumers: one of the Commission's parity goals is to ensure that consumers have access to E911 services whether they use landline or wireless phones."[65] Moreover, because landline carriers are unable to pass E911 implementation costs to customers, as wireless carriers can, "the Commission had more than sufficient reason to choose a different E911 implementation scheme for wireless carriers."[66]

CONCLUSION

For the foregoing reasons, the Bureau should deny Petitioners' request for reconsideration of the King County ruling. The Bureau's decision that wireless carriers bear those costs that precede the 9-1-1 Selective Router while Public Safety Answering Points (PSAPs) are responsible for costs beyond the input to the 9-1-1 Selective Router is fully in accord with the record in Docket No. 94-102.

[64] *Cassell*, 154 F.3d at 485.
[65] *U.S. Cellular,* 2001 U.S. App. LEXIS 14395, *25, citing Second Report and Order, 14 FCC 10954 at p. 4. .
[66] *U.S. Cellular,* 2001 U.S. App. LEXIS 14395, *25.

Respectfully submitted,

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Rupaco T. González, Jr.
State Bar No. 08131690

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Patricia Ana Garcia Escobedo
State Bar No. 12544900

Attorneys for the Texas 911 Agencies

The González Law Firm
One Westlake Plaza
1705 South Capitol of Texas Highway
Austin, Texas 78746
(512) 330-9696
(512) 330-9898 (FAX)
pacolaw@msn.com

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I certify that a copy of these comments is being served on July 30, 2001, by regular or overnight mail or fax on the required parties.

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Patricia Ana Garcia Escobedo

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